REMARKS

Applicants respectfully request reconsideration of the present application in view of the following comments.

I. Status of the Claims

Claims 1-26, 51-53 and 107-109 were cancelled previously. Claims 27-28 and 87 are amended with exemplary support in the original specification, *e.g.*, at page 15, lines 23-24. Because no new matter is introduced, Applicants respectfully request entry of this amendment. Upon entry, claims 27-50 and 87-106 are pending, with claims 54-86 and 110-111 withdrawn from consideration.

II. Rejection of Claims under 35 U.S.C. §102(b)

Claims 27-47, 50 and 87-106 are rejected under 35 U.S.C. §102(b) for alleged anticipation by U.S. Patent No. 5,518,738 to Eickhoff et al. ("Eickhoff"). Applicants respectfully traverse the rejection.

As repeatedly argued in the prior responses, Eickhoff does not teach or suggest: (i) a solid dose porous matrix, or (ii) that the solid dose porous matrix disintegrates or dissolves upon contact with saliva in less than 3 minutes recited in the claims.

Regarding point (i), the Examiner insists that "the term 'matrix' is generally recognized as 'something within or from which something else originates, develops, or takes form" based on a general definition in the dictionary.

As established by the Ruddy Declaration submitted on November 13, 2009, the solid matrix in the claimed invention has an art-recognized three-dimensional porous structure. *See* the Ruddy Declaration, section 5.

The Examiner's position clearly contradicts the examination guidelines set forth in MPEP 2173.05(a): "Consistent with the well-established axiom in patent law that a patentee or applicant is free to be his or her own lexicographer, a patentee or applicant may use terms in a manner contrary to or inconsistent with one or more of their ordinary meanings if the written description clearly redefines the terms." In the present case, interpreting the term "matrix" according to the general dictionary definition rather than observing the industrial standard definition certainly fails to follow the MPEP to given "broadest ***reasonable*** interpretation."

Concerning point (ii), the Examiner improperly invoked the "inherency" doctrine because, as discussed above, Eickhoff's composition is different from the claimed composition for lack of a solid dose matrix. "Inherency" can only be applied when the Examiner is able to establish that the prior-art product is "***substantially identical***" to the claimed invention. *See* MPEP 2112.

Accordingly, Applicants respectfully request that the Examiner give proper weight to the evidence on the record and withdraw the rejection under Section 102.

III. Rejection of Claims under 35 U.S.C. §103(a)

A. Eickhoff, Specification and Acosta-Cuello

Claims 27-50 and 87-106 are rejected under 35 U.S.C. §103(a) for allegedly being obvious over Eickhoff in view of the specification (page 1, line 31 through page 4, line 22) or PCT Publication No. WO 97/18796 by Acosta-Cuello ("Acosta-Cuello"). Applicants respectfully traverse the rejection.

As discussed above, Eickhoff relates to a nanoparticulate NSAID composition. Eickhoff does not teach or suggest a rapidly disintegrating dosage form. The Examiner relies on the background section in the specification and the teaching of Acosta-Cuello to show that rapidly disintegrating formulations were known at the time of the invention. Applicants do not deny the

state of the art at the time the present application was filed. Instead, Applicants explicitly state in the specification that at the time of the invention, a rapidly disintegrating dosage form ***comprising a nanoparticulate active agent***, was not available. An excerpt of the specification at page 4, lines 23-32 is reproduced below, with emphasis added:

> *None of the described prior art teaches a rapidly disintegrating or dissolving, or "fast melt," dosage form in which a poorly soluble active ingredient is in a nanoparticulate form. This is significant because the prior art fast melt formulations do not address the problems associated with the bioavailability of poorly soluble drugs. While prior art fast melt dosage forms may provide rapid presentation of a drug, frequently there is an undesirable lag in the onset of therapeutic action because of the poor solubility and associated slow dissolution rate of the drug. Thus, while prior art fast melt dosage forms may exhibit rapid disintegration of the drug carrier matrix, this does not result in rapid dissolution and absorption of the poorly soluble drug contained within the dosage form.*

In response to Applicants' argument regarding a lack of suggestion to combine the cited references, the Examiner asserts that "[o]ne would have been motivated to make such [a] modification to increase solubility and/or improve disintegration rate to accommodate patient's preference and needs where the compliance could be improved with effective and well tolerated dosage regimen." *See* Office Action, page 15, lines 12-15.

Contrary to the Examiner's assertion, one skilled in the art would not have combined the teaching of nanoparticulate active agent compositions with that of rapidly disintegrating dosage forms because the combination contravenes the conventional wisdom. Specifically, because drugs formulated in rapidly integrating dosage forms dissolve or melt in a patient's mouth in close proximity to the taste buds, taste-masking techniques are crucial to increase patient compliance. A commonly accepted taste-masking technology is to coat a drug with a film coating to minimize the unpleasant taste. *See* Fu et al., *Critical Reviews in Therapeutic Drug Carrier Systems* 21(6): 433-475 (2004), submitted herewith as Exhibit A, at page 435, Section II.B.; and at pages 460-462, section V.C.

The conventional wisdom at the time of the invention is that taste-masking techniques, such as film coating, have a great impact on drug dissolution profiles. *See* Exhibit B (Klancke, Dissolution Technologies, pages 6-8, May 2003) at pages 7-8, the section entitled "Taste-Masking Drives Dissolution." As shown in Figure 1, dissolution of the drug ***decreased*** with the increase of the coating level of the drug.

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As film coating of drug increases,

← ← ← ← ← ← ← ← ← ←
drug dissolution decreases.

As such, one skilled in the art would not have considered it obvious to combine rapidly disintegrating technology with nanotechnology because the former applies a taste-masking coating which ***decreases dissolution*** of drugs in general; whereas the latter aims at ***increasing dissolution*** of drugs by reducing the particle size.

Accordingly, the Examiner fails to establish a ***prima facie*** case of obviousness by articulating a convincing reason to combine the references. Rather, the suggestion to combine the references is based on impermissible hindsight. Accordingly, withdrawal of the rejection is warranted.

B. Eickhoff, Specification, Acosta-Cuello and Kerkhof

Claims 27-50 and 87-106 are rejected for allegedly being obvious over Eickhoff in view of the specification or Acosta-Cuello, and further in view of PCT Publication No. WO 01/45674 by Kerkhof et al. ("Kerkhof"). Applicants respectfully traverse the rejection.

The teachings of Eickhoff, the specification, and Acosta-Cuello are discussed above. Kerkhof is cited for the alleged teaching of additional poorly water soluble active agents, such as NSAIDs. Because Kerkhof fails to compensate for the deficiencies of Eickhoff and Acosta-

Cuello as discussed above, the combined teachings of the cited references fail to render the claimed invention obvious.

IV. Double Patenting Rejection

A. U.S. Patent No. 6,316,029

Claims 27-50 and 87-106 are rejected for alleged double patenting over U.S. Patent No. 6,316,029. Without acquiescing to the stated basis for the rejection, Applicants submit herewith a terminal disclaimer for the '029 patent. Accordingly, withdrawal of the double patenting rejection is warranted.

B. U.S. Patent No. 7,276,249

Claims 27-50 and 87-106 are rejected for alleged double patenting over U.S. Patent No. 7,276,249 ("the '249 patent") in view of the specification or Kerkhof. Applicants respectfully traverse the rejection.

The '249 patent relates to a nanoparticulate fibrate composition. The teachings of the specification and Kerkhof are discussed above. None of the cited references disclose a solid dose matrix surrounding the nanoparticulate active agent which disintegrates or dissolves upon contact with saliva in less than about 3 minutes. Therefore, Applicants respectfully request withdrawal of the rejection.

CONCLUSION

The present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested. The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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